

REXBURG, FRIDAY, SEPTEMBER 12, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JERRY MENDENHALL, an individual,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 ALAN W. ALDOUS and JENNIFER)
 ALDOUS, husband and wife, doing business)
 as ALDOUS CONSTRUCTION,)
)
 Defendants-Respondents.)

Docket No. 34700

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Lemhi County. Hon. Brent J. Moss, District Judge.

Thomsen Stephens Law Offices, Idaho Falls, for appellant.

Jordan P. Smith, Salmon, and Beard, St. Clair, Gaffney, P.A. Idaho Falls, for respondents.

Jerry Mendenhall purchased a partially-finished home from Alan and Jennifer Aldous, dba Aldous Construction. Aldous agreed to finish the home as part of the sales contract. Mendenhall also contracted with Aldous to build a shop on the property. A dispute arose between the parties, and Aldous halted work. Aldous attempted to resolve the dispute through his attorney, but Mendenhall notified him in a letter that he intended to hire other contractors to complete the work and expected Aldous to reimburse him. Several letters passed between the parties. Nearly a year later, Mendenhall filed suit, alleging that Aldous had breached its contracts for the house and shop. Aldous moved for summary judgment, contending Mendenhall failed to comply with Idaho's Notice and Opportunity to Repair Act, I.C. § 6-2501—2504, which requires a homeowner to notify the contractor of construction defects and allow for their cure prior to bringing suit. The district court granted summary judgment, and Mendenhall appeals.

REXBURG, FRIDAY, SEPTEMBER 12, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BURNS HOLDING, LLC, an Idaho limited liability company,

Plaintiff-Appellant,

v.

MADISON COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Idaho,

Defendant-Respondent.

Docket No. 33753

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Madison County. Honorable Brent J. Moss, District Judge.

Holden, Kidwell, Hahn & Crapo, Idaho Falls, for appellant.

Madison County Prosecutor's Office, Rexburg, for respondent.

This appeal arises from a county board of commissioners' denial of a landowner's applications to amend the County comprehensive plan and to rezone his property.

Burns Holdings, LLC (Burns) owns a 49-acre parcel in Madison County, Idaho. The company intends to build a concrete batch plant on the site. The property is located close to the North Rexburg Interchange on Highway 20. In 2003, the previous owner of the property, Gayle Taylor, submitted applications to the County requesting an amendment to the County's comprehensive plan and requesting a zone change from "Transitional Agriculture Two" to "Industrial." Taylor requested the change in anticipation of selling the property to Burns, whom she knew planned to build a concrete batch plant on the site.

While Taylor's request was pending before the Madison County Board of Commissioners (Board), Burns acquired Taylor's property and a neighboring two-acre parcel. Taylor's applications were subsequently denied by the Board. Following the Board's denial of Taylor's applications, Burns filed two applications with the County in November of 2004. The first application sought to amend the comprehensive plan to allow commercial and light industrial activity in the area where the subject land was located. The second application requested a zoning change of the subject land from "Transitional Agriculture Two" to "Commercial" and "Light Industrial."

At a public hearing on the matter, the Board orally denied Burns' application for an amendment to the comprehensive plan. A written decision followed. The decision did not, however, specifically address the application for a zoning change. Burns filed a petition for judicial review of the Board's decision. Burns alleged that the Board's decision was, *inter alia*,

arbitrary and capricious. The gravamen of Burns' complaint is that the Board's decision was "results oriented" because, at the same time it denied the Burns application, the Board approved the Walters application. The Walters application also sought rezoning, albeit for the purpose of allowing a gravel pit on Walters' property.

The district court remanded the matter to the Board because of concerns that one of the Board members had a conflict of interest and because of the Board's misinterpretation of evidence regarding traffic and safety. On remand, the member of concern was no longer serving on the Board. After reviewing the traffic and safety issues and reexamining the comprehensive plan, the Board again denied Burns' request for an amendment to the comprehensive plan. The Board concluded that Burns application was not in line with the comprehensive plan because of its location in an agricultural and residential area. The Board noted that Burns' property was located away from the city limits and that its isolation from other industrial and commercial properties would not be congruent with the County's policy to group such activities. The Board also noted significant aesthetic and safety concerns and the potential negative affect on surrounding residential property values.

Burns filed a second petition for judicial review. This time, the district court upheld the Board's decision. The district court did, however, award partial attorney fees to Burns because of the Board's misinterpretation of the traffic issue at the first hearing and because of the presence of the original conflicted Board member. The County filed a motion for reconsideration on the attorney fees issue, which the district court granted, reversing its decision. Burns then appealed to this Court.

REXBURG, FRIDAY, SEPTEMBER 12, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TINA M. CHERRY,

Plaintiff-Respondent,

v.

**COREGIS INSURANCE COMPANY, an
Illinois insurance company, doing business in
Idaho under Certificate of Authority No.
PC602,**

Defendant-Appellant.

Docket No. 34404

Appeal from the Seventh Judicial District of the State of Idaho, Bingham County.
Hon. Jon J. Shindurling, District Judge.

Anderson, Julian & Hull LLP, Boise, for appellant.

Goicoechea Law Offices, Pocatello, for respondent.

This case arises out of the interpretation of a clause in an insurance policy for underinsured motorist coverage. Tina Cherry (Cherry) was involved in an automobile accident during the course and scope of her employment with the Snake River School District (the School District). The School District carried an underinsured motorist policy through Coregis Insurance Co., with a policy limit of \$250,000. All parties stipulate that Cherry incurred damages in excess of the \$250,000 policy. Cherry collected \$102,361.01 from the Idaho State Insurance Fund (ISIF) subject to a statutory subrogation lien. The lien requires Cherry to repay any money received from a third-party tortfeasor. Cherry collected \$100,000 from the third-party tortfeasor's insurance company, Farmers Insurance Co. (Farmers), which was used to reimburse the ISIF. Cherry then filed suit against Coregis to collect the limits of the underinsured motorist policy. Coregis paid Cherry \$47,638.99 under the terms of the policy which allows for deductions from the policy limit for: (1) any funds paid by worker's compensation (the \$102,361.01 paid by ISIF); and (2) any funds paid by a responsible party (the \$100,000 paid by Farmers on behalf of the third-party tortfeasor). The district court granted summary judgment in favor of Cherry and found that under the policy Coregis may not deduct funds paid by Farmers, but subject to a statutory subrogation lien. That is, Coregis may not deduct funds that Cherry received from Farmers but was statutorily required to repay to ISIF. Coregis appeals that decision.